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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,316	08/24/2001	John T. Nordberg	2753.01US02	3885

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EXAMINER

PALABRICA, RICARDO J

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 03/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/939,316

Applicant(s)

NORDBERG, JOHN T.

Examiner

Rick Palabrica

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-27 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-22, 24 and 26 drawn to an **apparatus** (nuclear fusion reactor), classified in class 376, subclass 122.
 - II. Claim 23, drawn to a **process** (production of commercial electricity), classified in class 376, subclass 147.
 - III. Claims 25 and 27, drawn to **process** (confining a fusion plasma burn), classified in class 376, subclass 121.

Inventions I and (II, III) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process of :1) Group II can be practiced by a nuclear fission reactor instead of the claimed nuclear fusion reactor, and 2) Group III can be practiced by an apparatus that induces a weak instead of the claimed strong spherical electromagnetic field.

Inventions II and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and

(2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed (i.e., Group II) does not require the particulars of the subcombination as claimed (i.e., Group III), such as the particulars of the strength of the spherical magnetic field and its interaction with the plasma. The subcombination has separate utility such as producing tracers (e.g. tritium) for medical applications, said tracers being a product of fusion of light nuclei in the fusion reactor.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group (II, III), restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

2. Upon election of one of the inventions identified above as I-III, applicant is further required under 35 U.S.C. 121 to elect one of the following disclosed species of the reactor-conducting sphere combination for prosecution on the merits to which the claims

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shall be restricted if no generic claim is finally held to be allowable (see, for example, claims 1, 18, 19 and 21). Currently, no claim appears to be generic.

- A: The embodiment as shown in Fig. 1 (1 reactor and 31 conducting spheres in an oval track).
- B: The embodiment as shown in Fig. 61 (1 reactor and 23 conducting spheres in an oval track).
- C: The embodiment as shown in Fig. 65 (2 reactors and 22 conducting spheres in an oval track).
- D: The embodiment as shown in Fig. 82 (2 reactors and 30 conducting spheres in an oval track).

3. Upon election of one of the inventions identified above as I-III, applicant is further required under 35 U.S.C. 121 to elect one of the following disclosed species of the circuit formed by the reactor core and conducting spheres for purposes of examination.

- E: Wherein said circuit is magnetic (see, for example, Fig. 13 and claims 3 and 4).
- F: Wherein said circuit is electrical (see, for example, Fig. 12 claims 5 and 6).

This additional requirement is to facilitate examining due to the diverse circuits disclosed as suitable.

4. Upon election of one of the inventions identified above as I-III, applicant is further required under 35 U.S.C. 121 to elect a single species of the coil arrangement for purposes of examination (see claim 16).

This additional requirement is to facilitate examining due to the diverse circuits disclosed as suitable.

5. Applicant is advised that a reply to the species election requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

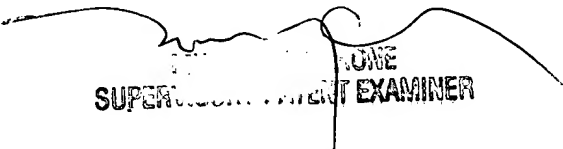
Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rick Palabrica whose telephone number is 703-306-5756. The examiner can normally be reached on 8:00-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-0285 for regular communications and 703-305-0285 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

RJP
March 18, 2002


SUPERVISOR EXAMINER